

Mentally ill people are languishing in jail. Pierce judge blames state, issues fines

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A Pierce County judge has heaped thousands in fines on Washington's Department of Social and Health Services for its continued failure to get jail inmates into court-ordered mental health treatment by deadlines mandated in a federal class action settlement, which already has the state racking up millions in sanctions.

The court orders, which the state appealed in November before they were finalized this week, follow a September motion by Pierce County to intervene in about three dozen cases stuck in limbo pending a defendant's mental competency restoration. County officials argued the state should reimburse jail costs for inmates whose court-ordered transfers to state facilities had been delayed for months.

"This is another example of the state offloading its responsibilities and passing its costs down to the counties," county Prosecuting Attorney's Office spokesperson Adam Faber wrote in a statement. "There's a lot more going on here than just questions about money. This is about justice for defendants and victims, it's about court efficiency, and it's about jail capacity, among other issues."

King County, which has the largest superior court in the state, moved for similar contempt orders in several cases in late November, the Seattle Times reported. Pierce County has the second-largest superior court, with 23 judges and 10 commissioners.

On Tuesday, Pierce County Judge Joseph Evans ordered the state to pay \$300 per day in the cases of about 40 defendants whose transfers to a state psychiatric facility, such as Western State Hospital, have been delayed beyond deadlines: within 14 days of filing court papers or seven days of state officials receiving them, whichever is earlier.

Pierce County defendants routinely wait more than six months for a bed in a state mental health facility, while one person waited nearly 600 days, according to court filings and testimony. Public defenders argue those delays mean more time in lockup for people whose mental health often gets worse under jail conditions and who haven't been convicted of a crime, raising civil rights issues.

State officials asserted in court filings last year that the delays in services are unintentional, and further fines could hinder efforts to create more beds and open new facilities.

"Pierce County may achieve a Pyrrhic victory, only to then play a part in deteriorating wait times because available funding becomes scarcer," the state wrote in court papers.

Evans, a former public defender, disagreed during an October hearing, ruling the delays willful and intentional. He said the state's efforts to address issues that have been ongoing for about a decade have been inadequate.

Evans also found a state statute that limits judges' contempt authority in competency delay cases was an unconstitutional overreach by the Legislature. Assistant attorney general Nicholas Williamson indicated the state also would fight that finding on appeal.

Evans said from the bench that he expected similar cases being litigated across the state to make their way to appellate courts as well.

"Someone else is going to have to dig through this," Evans said.

The impacted Pierce County prosecutions range in severity from homicides to car thefts, according to court documents. Some defendants who were included in the litigation this fall have since had their charges dismissed or been transferred to treatment.

Evans said in October that many of those defendants had effectively served what would be the high-end of their sentences upon conviction while awaiting pre-trial treatment from the state.

In the case of one man jailed since March, DSHS claimed in court filings that he'd be admitted to Western State Hospital in early October.

He remained in jail as of Wednesday, more than 230 days after his treatment deadline, according to jail records. Sanctions in his case could amount to about \$70,000.

For a Pierce defendant who waits 100 days past the deadline for a mental health bed, the state would owe a total of \$30,000.

Any fines paid to the county would be on top of the \$98 million and counting that's accruing under a 2018 settlement in the 2014 federal class-action case known as Trueblood, which established the treatment deadlines. The case stemmed from unconstitutional delays in mental competency evaluations and subsequent restoration services.

The Seattle Times reported delays have grown longer despite the state's efforts during the last four years.

While the state's two adult mental hospitals and a network of smaller local facilities struggle with a critical shortage of beds, the number of competency restorations ordered by Washington judges each month has more than doubled since 2015, according to the Seattle Times.

If Evans' ruling is upheld in state appellate court, Faber said, the court sanctions would go into the county's general fund and County Council would allocate the money. Deputy prosecuting attorney Michelle Luna said in court that the county wanted to collect about

\$260 in daily fines per defendant on behalf of the jail, which is the cost charged to surrounding municipalities to hold inmates in the mental health unit.

Faber said the \$260 doesn't cover the actual cost of daily incarceration.

"The County will continue to explore legal remedies to assure that the state fulfills its statutory obligation to restore competency so that individuals may be brought to justice and so that local taxpayers do not have to cover costs that are due to the state's dilatory actions," Faber wrote in a statement.